90-1815

Supreme Court, U.S.
FILED
FEB 19 1991
OFFICE OF THE CLERK

NO. _____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1991

HENRY A. FLETCHER, SR.,
ET UX ETHELENE FLETCHER,

Petitioners,

V.

DISTRICT BOARD, UNITED PENTECOSTAL CHURCH-TEXAS DISTRICT, UNITED PENTECOSTAL CHURCH-TEXAS DISTRICT, UNITED PENTECOSTAL CHURCH INTERNATIONAL, VERNON L. NEELY AND E.L. HOLLEY,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE TEXAS SUPREME COURT

Michael P. Fleming
440 Louisiana, Suite 1510
Houston, Texas 77002
(713) 222-0628

COUNSEL FOR PETITIONERS

QUESTIONS PRESENTED

1. Whether a minister's license to practice in a particular church is a property right which can be protected through a civil lawsuit when it has been unfairly revoked through fraud.

2. Whether a church is subject to a suit for fraud and slander by one of its own ministers when that minister has been the victim of a scheme to fraudulently revoke his license to preach.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO
THE TEXAS SUPREME COURT

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Henry A. Fletcher, Sr. and Ethelene

Fletcher, the petitioners herein, pray that a writ of certiorari issue to review the judgment of the Texas Supreme Court entered in the above-entitled case on November 21, 1990 affirming the judgment of the Court of Appeals of the Ninth District of the State of Texas which affirmed the judgment of the 159th Judicial District Court of the State of Texas which dismissed the petitioners' causes of action against the respondents.

OPINIONS BELOW

The memorandum opinion of the Texas Supreme Court denying the petitioners' Writ of Error which was issued on November 21, 1990 is unreported and is printed in Appendix A hereto. The judgment of the Ninth Court of Appeals of the State of Texas which was issued on

August 30, 1990 is printed in Appendix B hereto. The judgment of the 159th District Court of Angelina County, Texas is printed in Appendix C hereto.

JURISDICTION

The judgment of the Texas Supreme Court was entered on November 21, 1990. The jurisdiction of the Supreme Court is invoked pursuant to section 1257(3) of Title 28 of the United States Code.

CONTITIUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably

to assemble, and to petition the Government for a redress of grievances."

STATEMENT OF THE CASE

A. Summary of Proceedings Below

The Henry A. Fletcher, Sr. and his wife, Ethelene Fletcher originally filed suit in Gualalupe County, Texas against all of the named respondents alleging that they conspired to revoke and did revoke his ministerial license without reasonable cause, engaged in a course of conduct deliberately designed to strip Fletcher of his credentials as a minister in direct derogation of the Church's rules and by-laws, slandered and libelled his reputation and interfered with his business relationships. In addition to the above torts, Fletcher alleged that

his license to practice in the Church was property right in that it involved a contract between himself and the Church. Under the terms of this contract, Fletcher agreed to pay his dues and in exchange, the Church agreed to issue him a license to preach under their authority. The respondents filed a plea to the jurisdiction and motion for summary judgment alleging the dispute was over a church right rather than a property right and therefore not subject to jurisdiction of the secular courts. The trial court granted the plea to the jurisdiction for the Church and the District and the motion for summary judgment for the individual defendants. On appeal, the Court of Appeals for the Ninth District of the State of Texas held that the revocation of Fletcher's

ministerial license is a purely ecclesiastical matter and that his claims relate to internal church discipline, faith, and organization governed by ecclesialtical rule, custom and law and not subject to the application of neutral principals of law. Upon application for Writ of Error, the Texas Supreme Court refused to hear the matter and did not file a written opinion on the matter.

REASONS WHY THE PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED

* * * * * *

ARGUMENT

I

THE COURTS BELOW INCORRECTLY HELD THAT PETITIONERS' CLAIMS RELATE TO INTERNAL CHURCH DISCIPLINE, FAITH, AND ORGANIZATION GOVERNED BY ECCLESIASTICAL RULE, CUSTOM AND LAW AND NOT SUBJECT TO THE APPLICATION OF NEUTRAL PRINCIPLES OF LAW.

This case is not a matter of church law, dogma or doctrine. The issue is whether a license requiring an annual fee for practicing a trade within a given body, constitutes a contractual property right. This matter involves an enforceable contract between the Petitioners and the Respondents whereby the former agreed to and did consistently pay a fee and the latter agreed to issue a license to practice as a minister in the Defendants' church. The license involved is similar to one issued by any other professional organization in that Petitioner was licensed to practice his occupation through the United Pentecostal Church and in exchange, he agreed to pay his yearly dues. The Petitioner paid his dues under the terms of the agreement but the Respondents broke their promise by

revoking his license through the use of fraudulent practices by falsly reporting that he had not paid the required dues.

There is more involved besides the breach of the above agreement. The Petitioner also accused the Respondents of fraud and slander, two torts which are actionable without the necessity to interpret church laws.

It is true that civil courts must accept as final the decisions of a church tribunal regarding questions of discipline, or of faith, or ecclesiastical rule, custom or law. Watson v. Jones, 13 Wall 679, 20 L Ed 666 (1872). However, in this case we are not dealing with any of the above religious considerations but with matters of contract and tort which can be decided in accordance with neutral principles of

state law. See Synanon Foundation, Inc. v. California, 100 S.Ct 496, 444 U.S. 1307, 62 L.Ed 2d 454 (1979). See also Jones v. Wolf, 443 U.S. 595, 61 L Ed 2d 775, 99 S.Ct 3020 (1979). In the case of Minker v. Baltimore Annual Conference of United Methodist Church, 894 F.2d 1354 (C.A.-D.C. 1990) it was held that an oral contract to provide a minister with a congregation more suited to his training and skills in exchange for his continued work at a temporary assignment ammounted to a contract which was enforceable in civil court if such proceedings would not create excessive entanglements with religious beliefs. The Fletchers' causes of action for breach of contract would involve no entanglements in religious beliefs and would not infringe upon religious activity any more than an

employee suing a church for wrongful discharge.

The Petitioners' claims based upon tort are likewise not barred by the First Amendment. The free exercise clause of the First Amendment does not immunize a church from all common-law causes of action alleging tortious activity. Van Schaick v. Church of Scientology, 535 F.Supp. 1125 (1982). The Petitioners have been denied their day in court because the Respondents are attempting to hide behind the First Amendment.

CONCLUSION

For the foregoing reasons, a writ of certiori should issue to review the judgment and opinion of the Supreme Court of the State of Texas.

DATED: February 14, 1991

Respectfully submitted,

Michael P. Fleming
Attorney for Petitioners

APPENDIX A

THE SUPREME COURT OF TEXAS
P. O. BOX 12248
Supreme Court Building
Austin, Texas 78711
John T. Adams, Clerk

November 21, 1990

Mr. Michael Allen Peters
440 Louisiana, Suite 1375
Box 145
Houston, Texas 77002-1635

Mr. Thomas W. Deaton
Flournoy & Deaton
118 S. Second
Lufkin, Texas 75901

RE: Case No. D-0442

Style: HENRY A. FLETCHER, SR., ET UX. V.
DISTRICT BOARD, UNITED PENTECOSTAL
CHURCH-TEXAS DISTRICT ET AL.

Dear Counsel:

Today, the Supreme Court of Texas denied the above referenced applciation for writ of error with the notation, "Writ Denied."

Sincerely,

JOHN T. ADAMS, Clerk

by_____
Courtland Crocker, Deputy

APPENDIX B

DECIDED ON AUGUST 30, 1990
NO. 09-89-166 CV

HENRY A. FLETCHER, SR., ET UX, ETHELENE FLETCHER,
APPELLANTS *

VS. *

DISTRICT BOARD, UNITED PENTECOSTAL CHURCH-TEXAS DISTRICT, UNITED PENTECOSTAL CHURCH-TEXAS DISTRICT, UNITED PENTECOSTAL CHURCH INTERNATIONAL, VERNON L. NEELY AND E.L. HOLLEY,
APPELLEES *

APPEALED FROM THE 159TH
DISTRICT COURT OF
ANGELINA COUNTY, TEXAS

O P I N I O N

Henry A. Fletcher, Sr. and his wife, Ethelene Fletcher, filed suit in Guadelupe County, Texas against District Board, United Pentecostal Church-Texas District ("the Board"), United Pentecostal Church International ("the Church"), United Pentecostal Church-

Texas District ("the District"), Vernon L. Neely, the Church secretary ("Neely"), and E.L. Holley, the Church District Superintendent ("Holley"). The suit alleged the several defendants conspired to revoke and did revoke Fletcher's ministerial license without reasonable cause, engaged in a course of conduct deliberately designed to strip Fletcher of his credentials as a minister in direct derogation of the Church's rules and by-laws and the contract, slandered and libelled his reputation within the Church, caused a loss of income and benefits, and interfered with Fletcher's business relationships and the rights and benefits of his license or contract. Fletcher complained the defendants conspired to make it appear he had not paid his ministerial tithes to the

District and dropped him from the rolls of the Church. The Fletchers alleged damages to reputation, mental anguish, loss of insurance benefits, loss of income, and loss of rights to participate on the District benevolent fund. Fletcher alternatively plead breach of contract arising from his ministerial license. In addition to pecuniary damages, Fletcher sought to enjoin the defendants from interfering with his operation as a licensed minister of the Church or denying that his is a duly licensed minister. The case was transferred to Angelina County, Texas. The defendants then filed a plea to the jurisdiction and motion for summary judgment alleging the dispute was over a church right rather than a property right and therefore not subject to jurisdiction

of the secular courts. The motion also urged there were no genuine issues of fact. The trial court granted the plea to the jurisdiction for the Church and the District and the motion for summary judgment for the individual defendants. The Fletchers' appeal from the judgment raises two points of error. Point of error one urges the trial court erred in granting the motions because civil courts may resolve disputes relating to church property or church contracts, citing Waters v. Hargest, 593 S.W.2d 364 (Tex. Civ. App.--Texarkana 1979, no writ). Fletcher argues the license he holds as an ordained minister of the Church is a property right and the dispute over its revocation by the governing body of the Church is thus subject to the

jurisdiction of the civil courts. Waters involved a dispute between two factions of a congregational church over the retention of the pastor. The court of appeals held that since there was to hierarchical constitution or regulations governing the right of the church to contract, and no church adjudicatories having jurisdiction to determine questions concerning such contracts, the dispute could be determined solely by the application of neutral principles of law. Id. at 365-366. First, Waters is distinguishable on its facts because that controversy involved the retention of a pastor after a division in the congregation, while the issue here is Fletcher's affiliation with a church to whose canon jurisdiction he voluntarily submitted. See Minton v. Leavell, 297

S.W. 615 (Tex. Civ. App.--Galveston 1927, writ ref'd).

Furthermore, Waters is distinguishable in that there was no ecclesiastical tribunal available for the settlement of the Waters dispute. No inquiry whether the decisions of the highest ecclesiastical tribunal of a hierarchical church complied with church laws and regulations is consistent with the constitutional mandate that civil courts are bound to accept the decisions of the highest judicatories of a religious organization of hierarchical polity on matters of discipline, faith, internal organization, or ecclesiastical rule, custom, or law. Serbian Orthodox Diocese v. Milivojevich, 426 U.S. 696, 96 S.Ct. 2372, 49 L.Ed.2d 151 (1976).

However, regardless of the structure of

the religious society involved, the subject of the suit is not one which a secular court may resolve without violating the First Amendment. See Watson v. Jones, 80 U.S. (13 Wall.) 679, 20 L.Ed. 666 (1872). Fletcher was licensed, not employed, by the Church. The only property right claimed by him is the ministerial license itself. The revocation of Fletcher's ministerial license is a purely ecclesiastical matter. The controversy concerns more than the mere payment of dues, but the doctrine of ministerial tithing and Fletcher's response to a disciplinary inquiry of the highest governmental body of the church District. He is not complaining of the procedure followed but of the factual sufficiency of the charges leading to his "defrockment" by the

religious judicatory. Appellants' claims relate to Fletcher's status as a minister of the Church and thus concerns internal church discipline, faith, and organization governed by ecclesiastical rule, custom and law and not subject to the application of neutral principles of law. See Hutchison v. Thomas, 789 F.2d 392 (6th Cir.) cert. denied 479 U.S. 885, 107 S.Ct 277, 93 L.Ed. 2d 253 (1986). We find no error. Point of error one is overruled.

Point of error two urges the trial court erred because there were questions of fact which would preclude the trial court from granting summary judgment relief. The point is without merit in light of our holding under point of error one. Since the trial court lacked jurisdiction over the ecclesiastical

dispute it was proper to dismiss the action against the Church and the District. The Fletchers' response to the summary judgment motion claimed they raised material issues of fact of whether there is a "ministerial financial plan" which is enforceable based upon prior conduct and whether Fletcher complied with the plan. These issues are properly determined by the ecclesiastical tribunal, as would the truth of the allegations made against Fletcher. The only conspiracy alleged was that the appellees falsely made it appear he had not paid his ministerial tithes. This is the very issue decided by the Board. The propriety of the actions of that tribunal is not properly reviewable. Serbian Orthodox Diocese v. Milivojevich, supra. Point of error two is overruled and the

judgment of the trial court affirmed.

AFFIRMED.

DON BURGESS
Justice

Opinion Delivered
August 30, 1990
Do not publish

APPENDIX C

DECIDED ON SEPTEMBER 20, 1988

IN THE DISTRICT COURT OF
ANGELINA COUNTY
STATE OF TEXAS
159TH JUDICIAL DISTRICT

CAUSE NO. 22,636-88-4

HENRY A. FLETCHER, SR., ET UX
ETHELENE FLETCHER

VS.

DISTRIC BOARD, UNITED PENTECOSTAL
CHURCH-TEXAS DISTRICT, ET AL

FINAL SUMMARY JUDGMENT

On the 20th day of September, 1988, there came on to be heard the Plea to Jurisdiction and Motion for Summary Judgment of Defendants.

Plaintiffs appeared by and through their counsel of record, Mr. Michael Allen Peters and co-counsel, Mr. Don Duran; Defendants appeared by and through its counsel of record, Mr. Thomas W. Deaton. The Court, upon hearing the

arguments of counsel, considering the Pleadings, the Summary Judgment Proof and trial briefs filed after hearing, finds that this Court lacks jurisdiction as to United Pentecostal Church International and United Pentecostal Church Texas District in this cause and that the individual Defedndants are entitled to Summary Judgment as a matter of law.

It is accordingly, ORDERED, ADJUDGED, and DECREED, that the Motion for Summary Judgment and Plea to the Jurisdiction are Granted in this cause and Judgment is here rendered that Plaintiff, HENRY A. FLETCHER et ux, ETHELENE FLETCHER, take nothing by this suit.

It is further ORDERED, ADJUDGED, and DECREED, that costs of suit are taxed against Plaintiff, for which let execution issue.

SIGNED this, the _____day of ____, 1989.

HONORABLE DAVID WALKER
District Judge